

HILLMAN

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 269 final

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
UPDATING THE EXPLANATORY MEMORANDUM WHICH ACCOMPANIED
THE DRAFT PROPOSAL FOR A COUNCIL REGULATION CONCERNING
THE INTRODUCTION OF A COMMUNITY CONSULTATION
PROCEDURE IN RESPECT OF POWER STATIONS LIKELY
TO AFFECT THE TERRITORY OF ANOTHER MEMBER STATE

COM(79) 269 final

PREFACE

The Commission refers to the proposal for a Council Regulation on the introduction of a Community consultation procedure in respect of power stations likely to affect the territory of another Member State (1). The Council regarded this proposed regulation as premature, but agreed to reconsider it at a later stage (2).

In the meantime a more urgent need for consultation of Member States on frontier sites has developed, partly because existing bilateral consultation between Member States has in some cases proved inadequate, and partly because public sensitivity on the environmental aspects of power plants has increased.

The Commission now considers that urgent consideration of this matter by the Council is necessary. To this end the present communication amplifies and updates the background statement which accompanied COM(76) 576 final.

The draft Council resolution, concerning consultation at Community level on the siting of power stations (1), which the Commission had proposed at the same time as the above Regulation, was adopted on the 20 November 1978 as a Council Resolution (3), concerning the mutual exchange of information at Community level on the siting of power stations. An expert group, composed of representatives of the Member States, was set up in the framework of the Energy Committee and has started its work.

BACKGROUND STATEMENT

1. In order to ensure that the requirements for electrical energy over the next decade in all the Community countries can be met, certain problems must be solved, one of the most important of which at present is the choice of sites for the location of new electricity power stations. Such sites must comply with a series of economic, technical environmental protection and land-use planning parameters.
2. In the densely populated Community countries there is a general scarcity of appropriate power plant sites. A certain number of power plants are or will also in future be located near frontiers or on international water courses. Regarding only the nuclear power plants there are 33 units (app. 25% of total number) in operation, under construction or planned in a distance up to 40 km from national borders; of those, 15 units are located at a distance less than 10 km from the border (see annex 1).

(1) COM(76) 576 final, dated 10 December 1976.

(2) Council meeting on 30 October 1979.

(3) O.J. (78) No. C 286, 30 November 1978.

3. Power stations located near a frontier or on an international water course may affect the territory of a State other than the one under whose jurisdiction the power station falls. The following examples illustrate this point:
- radioactive effluents from nuclear power plants under normal and abnormal operating conditions can affect the territory of a neighbouring State;
 - sulphur dioxide emissions from a conventional thermal power station can increase the level of sulphur in the atmosphere of a neighbouring State;
 - thermal discharges into the atmosphere can influence the micro-climate (fog formation, change in the rainfall pattern and temperature) of a regional area belonging to another State;
 - thermal discharges and the drawing of water from international water courses may have repercussions on all the riparian States downstream from the power station; in the same way the favourable effects of flow regulation which result from the construction of reservoirs and barrages for hydro-electric power stations will be felt downstream;
 - the building of a power station near the frontier with another State may be incompatible with an installation belonging to the neighbouring State (e.g. airport, allegedly dangerous chemical works, etc.).
4. Article 37 of the EAEC Treaty provides for a Community consultation procedure concerning radioactive effluents from nuclear installations: each Member State is thus required to provide the Commission with such general data relating to any plan for the disposal of radioactive waste which will make it possible to determine whether the implementation of such a plan is likely to result in the radioactive contamination of the territory of another Member State. The Commission shall deliver an opinion within 6 months, after consulting a group of experts.
- But this procedure is normally done not earlier than in the final phase of plant construction. One Member State only has a law requiring this procedure to take place before a construction permit is granted.
5. At present there is no Community consultation on such influences which do not come under Article 37 of the EAEC Treaty. There are bilateral contacts between various Member States on frontier power plants. In recent years such contacts were not always satisfactory. The Council will be well aware that the public sensitivity on environmental aspects of power plants is increasing and can be expected to continue to grow.

To ensure that Member States are supplied with adequate information on the possible effects that can be caused by power stations in neighbouring Member States, it is proposed to set up a Community consultation procedure in respect of all those aspects not covered by Article 37 of the EAEC Treaty.

6. The main elements of such a Community consultation procedure should be as follows:
 - When a Member State considers that the carrying out of a power station project of another Member State is likely to affect its national territory, it shall request the Commission to apply the consultation procedure in respect to this power station,
 - the Member State, responsible for the power station project should then provide the Commission with the necessary data to permit the Commission to assess the possible effects across the frontier,
 - with the assistance of a group of experts from the Member States the Commission would examine this data and deliver its opinion to the Member States concerned.
7. In comparison with a bi- or multilateral procedure or case by case contacts between the countries concerned, a Community procedure
 - gives a guarantee of impartiality and ensures the maintenance of a uniform level of assessment throughout the Community, whilst taking account of the local particularities of each site,
 - is likely to increase the confidence of frontier populations in electricity generating stations,
 - allows advantage to be taken of experience gained in the treatment of similar cases in other Community regions,
 - can be of service to the Member States, in cases where the technical problems are complex and where the Member States would welcome the provision of further expertise,
 - can contribute to the resolution of divergent views between Member State on a particular project,
 - is more effective than an ad-hoc multi-lateral dialogue in the case of power station siting on international waters,

- constitutes a good point of departure for the negotiation of agreements on adhesion to the procedure with third countries bordering on the Community.

8. In view of the above considerations, the Commission invites the Council to reconsider the proposed regulation concerning the introduction of a Community consultation procedure in respect of power stations likely to affect the territory of another Member State (COM(76) 576 final) and to reach a decision upon it as soon as possible.

NUCLEAR POWER PLANTS IN THE COMMUNITY
LOCATED NEAR FRONTIERS OR ON INTERNATIONAL WATERS

Site	Type	In Service		Under construction		Project		Neigh- bouring country	Distance from the frontier (kms)	Water course
		Number of units	Unit capacity (MWe net)	Number of units	Unit capacity (MWe net)	Number of units	Unit capacity (MWe net)			
FRANCE Chooz, SENA Fessenheim 1, 2 Fessenheim 3, 4 Gravelines 1, 2 3, 4 5, 6 Cattenom 1, 2	PWR	1	305					B	2	Maas
	PWR	2	890			2	905	D	0	Rhine
	PWR									
	PWR			4	925	2	925	B	30	North Sea
	PWR					2	1300	L D	10 13	Mosel
NETHERLANDS Borssele Dodewaard	PWR	1	450					B	20	-
	BWR	1	52					D	25	-

NUCLEAR POWER PLANTS IN THE COMMUNITY
LOCATED NEAR FRONTIERS OR ON INTERNATIONAL WATERS

Site	Type	In Service		Under construction		Project		Distance from the frontier (kms)	Water course
		Number of units	Unit capacity (MWe net)	Number of units	Unit capacity (MWe net)	Number of units	Unit capacity (MWe net)		
BELGIUM BR 3 - Mol Doel 1, 2 Doel 3 Doel 4 Tihange 1 Tihange 2 Tihange 3	PWR	1	10					10	-
	PWR	2	392						
	PWR			1	897			5	Scheldt
	PWR			1	980				
	PWR	1	880						
	PWR			1	902			40	Maas
	PWR			1	980				
FEDERAL REPUBLIC OF GERMANY KWK I } Karlsruhe KWK II } AVR Jülich KW L } Lingen KKE } Philippsburg 1 Philippsburg 2 Wyl 1 Kalkar SNR-300 Kalkar SNR 2	HWR	1	51					10	-
	FBR	1	18					20	-
	HTR	1*	13						
	BWR	1	240					23	Em
	PWR			1	864	1	1300	35	-
	BWR			1	1281			0	Rhine
	PWR			1	1284			15	Rhine
	PWR			1	295				
	FBR					1	1300		
	FBR								

* Out of service.

PROPOSAL FOR A COUNCIL REGULATION

concerning the introduction of a Community consultation
procedure in respect of power stations likely to affect
the territory of another Member State

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 235 thereof;

Having regard to the Treaty establishing the European Atomic Energy Community,
and in particular Article 203 thereof;

Having regard to the Proposal of the Commission (1);

Having regard to the Opinion of the European Parliament (2);

Having regard to the Opinion of the Economic and Social Committee (3);

Whereas the establishment of a common energy policy is one of the objectives
of the Community; whereas it is the Commission's task to propose the measures
to be taken for this purpose;

Whereas under the Council Resolution of 3 March 1975 on energy and the
environment it is incumbent on the Communities and the Member States to take
environmental protection requirements into account in all energy policy
strategy by taking effective measures;

Whereas electric power has an important role to play in a Community energy
policy;

Whereas the selection of sites for new power stations, be they nuclear or
conventional, is one of the major problems raised by the development of
electric power;

(1) COM(76) 576 final.

(2) OJ (77) C 183, 1.8.1977.

(3) OJ (77) C 114, 11.5.1977.

Whereas power stations, particularly those built in frontier regions and on international watercourses or water surfaces may affect the national territory of States other than those responsible for the stations;

Whereas Community-wide consultation exists only in respect of plans for the discharge of radioactive effluents likely to cause radioactive contamination of the waters, soil or air space of another Member State;

Whereas it is therefore necessary to introduce a Community consultation procedure in respect of the abovementioned power stations;

Whereas such a consultation procedure implies that the Member State on whose territory the proposed project is to be carried out shall communicate to the Commission such data as to make possible an assessment of the likely effects which the project might have on the territory of another Member State; whereas, to this end, the persons and undertakings involved shall be required to communicate this data to the Member State on whose territory the proposed project is to be carried out;

Whereas the powers of action required for this purpose are not provided for by the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community;

HAS ADOPTED THIS REGULATION

Article 1

1. The construction of new power stations and the extension of existing ones likely to have effects, not covered by Article 37 of the Treaty establishing the European Atomic Energy Community, on the territory of a Member State other than the one on whose territory it is proposed to carry out the project shall be subject to a procedure of prior Community consultation.

2. Conventional thermal power stations with a net generating capacity of less than 200 MW and hydroelectric power stations with a net generating capacity less than 50 MW shall be excluded from the consultation procedure.

Article 2

1. The Commission shall, on the basis of communications submitted to it pursuant to Council Regulation (EEC) No 1056/72 of 18 May 1972 on the notification to the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors (1), as amended by Council Regulation (EEC) No 1215/76 (2), draw up a list of new power station projects, indicating their site, capacity and type and shall forward this list to the Member States during the month of March each year.
2. The Community consultation procedure envisaged by Articles 3 to 6 may be initiated
 - by a Member State which considers that a power station planned by another Member State is likely to have effects on its territory which are not covered by Article 37 of the EAEC Treaty;
 - by the Member State on whose territory it is proposed to build the power station;
 - by the Commission.

Article 3

1. The Commission shall inform the Member State in question that Community consultation has been requested in respect of a proposed power station to be built on its territory and shall request that State to supply such data as will enable an assessment to be made of the following points:

(1) OJ No L 120, 25 May 1972.

(2) OJ No L 140, 28 May 1976.

- the permanent, temporary or potential effects on the atmosphere, soil, surface and ground waters of the other Member States,
 - the risks for neighbouring States likely to arise from any malfunctioning of the power station or from accidents,
 - the possible interaction between one or more border power stations and installations of all types, whether existing, under construction or planned, in a neighbouring Member State where the hazards and effects on the environment and health might be cumulative.
2. This information shall, at the latest, be communicated to the Commission when the competent national authorities receive a request for permission to build or extend a power station.
 3. In order to fulfil the obligation specified in paragraphs 1 and 2, the persons and undertakings concerned are required to communicate the information referred to in paragraph 1 to each Member State on whose territory they intend to build the planned power station, in respect of which Community consultation has been requested.

Article 4

1. The Commission shall consult a panel of independent experts.
2. At the request of the Commission each Member State shall appoint one or more experts on whom the Commission may call in order to form the panel referred to in paragraph 1.

Article 5

1. The Commission shall, after consulting the panel of experts referred to in Article 4, deliver an opinion within six months from the date of notification of the information referred to in Article 3.

2. The Commission's opinion shall be forwarded to the Member State on whose territory the proposed project is to be carried out and to those Member States which have requested that the Community consultation procedure be put into operation.

Article 6

1. If the Commission considers that the information supplied is insufficient to enable an assessment to be made of the aspects referred to in Article 3 paragraph 1, it shall inform within sixty days the Member State on whose territory the project is to be carried out specifying the information which is lacking. The Member State concerned shall forward this additional information to the Commission within thirty days. Upon receipt of this additional information and in any case on expiry of the thirty-day period, the Commission shall deliver an opinion in accordance with the procedure laid down in Article 5.
2. If important changes likely to influence the assessment of the various points referred to in Article 3 paragraph 1 are made to the power station plans after the Commission has delivered its opinion, the Member State on whose territory the proposed power station is to be built shall be required to provide the Commission with the additional information as soon as it becomes available. In accordance with the procedure laid down in Article 4, the Commission shall deliver a supplementary opinion within three months.

Article 7

This Regulation shall enter into force one month after its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

